

## **REMARKS**

Applicant submits that this Amendment After Final Rejection places this application in condition for allowance by amending claims in manners that are believed to render all pending claims allowable over the cited art and/or at least place this application in better form for appeal. This Amendment is necessary to clarify certain claim limitations and was not earlier presented because Applicant believed that the prior response(s) placed this application in condition for allowance, for at least the reasons discussed in those responses. Accordingly, entry of the present Amendment, as an earnest attempt to advance prosecution and/or to reduce the number of issues, is requested under 37 C.F.R. §1.116.

In the event that the Office declines to enter the present Amendment, and (i) any portion of the present Amendment would place some of the claims in better form for appeal if a separate paper were filed containing only such amendments or (ii) any proposed amendment to any claim would render that claim allowable, Applicant respectfully requests that the Office inform Applicant of the same pursuant to MPEP §714.13.

By this amendment, the specification has been amended. Claims 1 and 8 have been amended. Claims 1-10 and 13 remain in the application. This application has been carefully considered in connection with the Examiner's Action. Reconsideration, withdrawal of the final action and allowance of the application, as amended, is requested.

### **The Specification**

The specification has been amended for clarification and to be consistent with the claims. In particular, the specification has been amended, as indicated herein above, to clarify that "the amount of energy within a predetermined frequency band may

be divided by the average (DC) of subsequent values of the audio feature (i.e., *subsequent values alone, not including preceding values*) to yield a relative modulation depth” (emphasis added). The added clarification can be reasonably inferred from at least the same paragraph of the specification, thus no new matter has been added.

### **Rejection under 35 U.S.C. §103**

Claims 1-3, 5, 6, 8, 9 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Scheirer** et al. (US 6,570,991, hereinafter referred to as “**Scheirer**”) in view of Gray et al. (“Design of Moving Average Trend Filters using Fidelity, Smoothness and Minimum Revisions Criteria”, Statistical Research Report Series No. RR96/01, Institute of Statistics and Operations Research, Victoria University of Wellington, New Zealand, 1997, hereinafter referred to as “**Gray**”). With respect to claim 1, Applicant respectfully traverses this rejection on the grounds that these references are defective in establishing a prima facie case of obviousness.

Independent claim 1 recites, inter alia, “dividing (b)(i) the summed energy within the at least one predetermined frequency band by (b)(ii) an average of *subsequent values alone* of said extracted predetermined audio feature, *not including preceding values*” (emphasis added).

Applicant submits that neither **Scheirer** nor **Gray** discloses at least the aforementioned feature of independent claim 1. In particular, it is submitted that the secondary reference to **Gray** does not remedy the conceded deficiency in the primary citation to **Scheirer**. Accordingly, without conceding the propriety of the asserted combination, the asserted combination of **Scheirer** and **Gray** is likewise deficient, even in view of the knowledge of one of ordinary skill in the art.

The Office Action concedes that the primary citation to **Scheirer** does not disclose an average of subsequent values. (Office Action, page 4, line 7). (It is further submitted that **Scheirer** does not disclose an average of subsequent values alone, not including preceding values.) Nonetheless, the Office Action rejects independent claim 1, contending that the secondary citation to **Gray** (p1, Abstract) provides this necessary disclosure. (Office Action, page 4, lines 8-9). This contention is respectfully traversed.

**Gray** relates to a design of moving-average trend filters using fidelity, smoothness and minimum revisions criteria. **Gray** discloses a central moving average filter which divides the present value by preceding and subsequent values (See Gray, p1, Abstract). However, as now more clearly presented, the claim language rules out a central moving average filter, since the claim language of claim 1 rules out using preceding values, and requires using subsequent values alone. Thus, **Gray** does not provide a disclosure that remedies the aforementioned, conceded deficiency in the primary citation to **Scheirer**.

Accordingly, claim 1 is allowable and an early formal notice thereof is requested. Claims 2-3, 5, 6 and 13 depend from and further limit independent claim 1 and therefore are allowable as well. The 35 U.S.C. §103(a) rejection thereof has now been overcome.

With respect to claim 8, the same contains limitations similar as with respect to claim 1. Claim 8 is thus believed allowable over the **Scheirer** and **Gray** references for the reasons stated herein above with respect to overcoming the rejection of claim 1. Accordingly, claim 8 is allowable and an early formal notice thereof is requested. Claim 9 depends from and further limits independent claim 8 and therefore is allowable as well. The 35 U.S.C. §103(a) rejection thereof has now been overcome.

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over **Scheirer** et al. (US 6,570,991) in view of **Gray** et al. ("Design of Moving Average Trend Filters using Fidelity, Smoothness and Minimum Revisions Criteria", Statistical Research Report Series No. RR96/01, Institute of Statistics and Operations Research, Victoria University of Wellington, New Zealand, 1997), in further view of **Blum** et al. (US 5,918,223). Applicant respectfully traverses this rejection for at least the following reasons. Claim 4 depends from and further limits allowable independent claim 1 and therefore is allowable as well. The 35 U.S.C. §103(a) rejection thereof has now been overcome.

Claims 7 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over **Scheirer** et al. (US 6,570,991) in view of **Gray** et al. ("Design of Moving Average Trend Filters using Fidelity, Smoothness and Minimum Revisions Criteria", Statistical Research Report Series No. RR96/01, Institute of Statistics and Operations Research, Victoria University of Wellington, New Zealand, 1997), in further view of **Rui** et al. (US 7,028,325). Applicant respectfully traverses this rejection for at least the following reasons. Claim 7 depends from and further limits claim 5, which depends from allowable independent claim 1 and therefore is allowable as well. Claim 10 depends from and further limits independent claim 8 and therefore is allowable as well. The 35 U.S.C. §103(a) rejection thereof has now been overcome.

### **Conclusion**

Except as indicated herein, the claims were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under the Doctrine of Equivalents. Applicants furthermore reserve their right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or

a continuation application. In addition, the Office Action contains a number of statements characterizing the claims, the specification, and the prior art. Regardless of whether such statements are addressed by Applicant, Applicant refuses to subscribe to any of these statements, unless expressly indicated by Applicant.

It is clear from all of the foregoing that independent claims 1 and 8 are in condition for allowance. Claims 2-7 and 13 depend from and further limit independent claim 1 and therefore are allowable as well. Claims 9 and 10 depend from and further limit independent claim 8 and therefore are allowable as well.

The matters identified in the Office Action of June 29, 2010 are now believed resolved. Accordingly, the application is believed to be in proper condition for allowance. The amendments herein are fully supported by the original specification and drawings; therefore, no new matter is introduced. Withdrawal of the final action and issuance of an early formal notice of allowance of claims 1-10 and 13 is requested.

Respectfully submitted,

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